

Members

Sen. Richard Bray, Chairperson  
Sen. Joseph Zakas  
Sen. John Broden  
Sen. Timothy Lanane  
Rep. Linda Lawson, Vice-Chairperson  
Rep. Ryan Dvorak  
Rep. Kathy Richardson  
Rep. Eric Koch  
Chief Justice Randall Shepard  
Thomas Felts  
David Whicker  
Kevin Kubash  
Jacqueline Rowan



## COMMISSION ON COURTS

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Authority: IC 33-23-10

### MEETING MINUTES<sup>1</sup>

Meeting Date: August 22, 2008  
Meeting Time: 1:30 P.M.  
Meeting Place: State House, 200 W. Washington St.,  
Room 431  
Meeting City: Indianapolis, Indiana  
Meeting Number: 1

Members Present: Sen. Richard Bray, Chairperson; Sen. Joseph Zakas; Sen. Timothy Lanane; Rep. Ryan Dvorak; Rep. Kathy Richardson; Rep. Eric Koch; Justice Frank Sullivan, Jr. (for Chief Justice Randall Shepard); Thomas Felts; David Whicker; Kevin Kubash; Jacqueline Rowan.

Members Absent: Sen. John Broden; Rep. Linda Lawson, Vice-Chairperson.

Sen. Richard Bray, Chairperson of the Commission on Courts (Commission), called the meeting to order at 1:33 PM.

After brief introductory remarks by Sen. Bray and the introduction of Commission members, the first person to testify was Justice Frank Sullivan, Jr. of the Indiana Supreme Court, Chairperson of the Judicial Technology and Automation Committee (JTAC). (Handout #1) (The JTAC website may be found at [www.in.gov/judiciary/jtac](http://www.in.gov/judiciary/jtac).)

Justice Sullivan stated that he would discuss the history of JTAC, JTAC initiatives other

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<sup>1</sup> Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.in.gov/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

than the case management system, and the current state of the case management system.

Justice Sullivan said that while most counties had computerized case management systems in place by the late 20th Century, the systems differed from county to county and many systems were outdated. He said the Indiana Supreme Court established JTAC in 1999 because of the growing impact of computer technology on the judicial system, the need for uniform policies to implement information technology within the judicial system, and the need for a centralized case management system.

Justice Sullivan said that the General Assembly enacted a \$7 per case technology filing fee in 2002 to create this centralized case management system and JTAC entered into a contract with Computer Associates (CA) as JTAC's principal vendor that same year. However, he said JTAC and CA agreed to mutually terminate their agreement in 2005 and CA refunded all amounts they had been paid by JTAC plus a "break up" fee.

Justice Sullivan then stated that he wanted to discuss some JTAC initiatives other than the case management system before discussing the current state of the system. He then played a DVD for the Commission highlighting these initiatives. The initiatives included the electronic ticketing program, the protective order registry, an electronic tax warrant program, an electronic marriage license information program, and an electronic court statistics program.

Following the DVD, Justice Sullivan stated that JTAC entered into a new contract on June 1, 2007, with Tyler Technologies to implement the statewide case management system. He stated that Tyler Technologies was utilizing its Odyssey software, which was first developed in Minnesota, to create the Indiana system. Justice Sullivan said he anticipates that the system will manage 20% to 25% of Indiana cases within the next 12 to 18 months.

Justice Sullivan concluded by stating that the cooperation between the judicial branch and executive branch of state government "could not be closer" in implementing the case management system and other JTAC projects. He stated, however, that none of it would be possible without the support provided by the General Assembly.

In response to questions from Rep. Dvorak, Justice Sullivan stated that JTAC had purchased a statewide license for the case management software and did not believe a county would incur any additional costs to use the case management system. He said it could take another four to five years before the system could be installed in every county that wanted it. He said that at that point, the Supreme Court would decide how to deal with any counties that did not have the system installed.

In response to questions from Sen. Lanane, Justice Sullivan stated that city and town courts could receive the system just as courts of record and the Marion County township small claims courts receive it.

In response to questions from Sen. Zakas, Justice Sullivan said the \$7 filing fee was adequate to implement the statewide case management system. However, he stated that the implementation could be achieved faster if JTAC had more funds. He also said the initiatives outside the case management system that he had discussed earlier did not receive any of these fees. He said those initiatives were mostly funded by federal grants. He said if JTAC had more funds they could take on more projects.

Sen. Bray then stated that the Commission may consider recommending changes to the filing fee at a future meeting.

Lilia Judson, Executive Director of the Division of State Court Administration, then distributed the Indiana Trial Courts 2007 Weighted Caseload Report (<http://www.in.gov/judiciary/admin/courtmgmt/wcm/index.html>) to the Commission.

Ms. Judson stated that the report was based on case filings. She stated that, on average, the number of cases filed in Indiana each year exceeds the number of available judges by 20% to 25%. She also stated that the 2007 calculations concerning severity of need in some counties did not include judicial officers recently added in those counties.

The next person to testify was Paje Felts, Legislative Counsel of the Indiana State Bar Association. Ms. Felts stated the Bar Association wanted to bring some issues before the Commission concerning the electronic publication of the Indiana Code, Indiana Administrative Code (IAC), and Indiana Register (IR). She stated that Marcia Oddi, publisher of the Indiana Law Blog ([www.indianalawblog.com](http://www.indianalawblog.com)), and Betsy DuSold, Associate General Counsel from Eli Lilly and Company, would discuss the details of these issues.

Ms. DuSold stated that the IAC and the IR are key documents in Indiana administrative law. She said that, beginning a few years ago, the IAC is only being published in an electronic format. She said that most states have printed versions of these provisions.

Ms. DuSold said that having electronic access to the IAC was a positive thing, but having documents available only in an electronic format could create legal problems, including problems with the citation system, security, disaster recovery, authenticity, and trustworthiness, and problems with access for persons who don't have a personal computer or a high-speed Internet connection.

Ms. DuSold also said there could be legal challenges concerning the admission into evidence of documents that are only available electronically. She also said it could be difficult to trace the history of a law that is only stored in an electronic data base.

Ms. DuSold stated she felt all the parties involved would thoughtfully address these issues to create authentic and reliable sources for administrative rules. She said some options included publishing a limited number of paper copies and creating electronic versions of documents that had similar headings and footers to paper copies as is done with the Federal Register.

Ms. Oddi then distributed two articles she had written for Res Gestae, "Can you rely on the Indiana Code" and "Assuring authentic legal information in the digital age," and a chart comparing provisions from the 1971 Bill Drafting Manual and the 1999 Bill Drafting Manual concerning when provisions should be placed in the Indiana Code and when they should be placed in Noncode provisions. (Handout #2)

Ms. Oddi said the official version of the Indiana Code should be authenticated, have permanency, be accessible, and be secure. She said that most people with whom she had talked felt the online version of the Indiana Code is deficient and contains mistakes.

Ms. Oddi continued by stating that some people also believe that if a provision is not in the Indiana Code but is in a noncode section instead then that provision is not the law. Ms. Oddi also said she believed there were many provisions that had been inappropriately placed in noncode sections. She said provisions concerning applicability and effective dates were her biggest concerns.

Ms. Oddi then referred the Commission to several examples of her concerns cited in her

article "Can you rely on the Indiana Code." (Handout #2)

The next person to testify was Jack Ross, Executive Director of the Legislative Services Agency (LSA). Mr. Ross stated he was not prepared to fully address the IAC and IR issues since he did not think the agenda included those matters. However, he did say that the LSA was talking with interested parties and had addressed some issues. He also said that the legislature had decided to publish the IAC and IR in electronic format only.

Mr. Ross said the Code Revision Commission was charged with overseeing bill drafting and the publication of the Indiana Code. He said LSA had worked with the Code Revision Commission over the years to adopt a drafting manual that included guidelines concerning the drafting of noncode provisions. Mr. Ross said there was never any attempt "to hide anything" by placing it in a noncode section.

Mr. Ross stated that one of Ms. Oddi's articles asserted that the online version of the Indiana Code was not up to date. He said that after the 2008 legislative session, the updated version of the Indiana Code was available on the Internet by July 8. He stated that the Enrolled Acts are available on the Internet within 24 hours of enactment and a compilation of all the 2008 Enrolled Acts was available on May 12.

Mr. Ross continued by stating that prior to LSA assuming the publication of the Indiana Code, the private contractor responsible for printing the Code did not have the updated version available until October or November.

Mr. Ross stated that many noncode provisions were transitional in nature and would clutter up the Indiana Code if they were placed in it. He said if a person is interested in newly passed legislation, then the person needed to look at the Enrolled Acts themselves.

Mr. Ross said the LSA was willing to work with the Legislative Council, the Code Revision Commission, the State Bar Association, and other interested parties to make the Indiana Code the best it can be.

The next person to testify was John Stieff, Director of the Office of Code Revision of the LSA. Mr. Stieff said the authentication of online legal documents was a national problem and not just an issue in Indiana.

Mr. Stieff said he served on the National Conference of Commissioners on Uniform State Laws and the Commissioners were examining this specific issue. Mr. Stieff said he expected the Commissioners to eventually make legislative recommendations concerning authentication of online legal documents.

Mr. Stieff continued by stating that Access Indiana published the online version of the Indiana Code. Mr. Stieff stated he would officially certify a document only if the provision in the document was compared to the LSA data base.

Mr. Ross then stated that the online versions of the IAC and the IR were published by the LSA and not by Access Indiana.

Mr. Stieff continued by stating that the Acts of Indiana are published every year on the Indiana General Assembly website and a limited number of hard copies are printed.

Mr. Stieff also said the LSA Drafting Manual had not been updated since 1999. He said that the LSA was in the process of updating the Manual this interim, including guidelines concerning noncode provisions.

The next person to testify was Timothy Tyler, Attorney for the Commission. Mr. Tyler distributed Preliminary Draft (PD) 3019 (Handout #3) to the Commission. (PD 3019 repeals the law concerning the establishment and operation of county courts.)

Mr. Tyler stated that as of January 1, 2009, no county court will exist in Indiana. He said that, over the years, every county that had a county court had eventually asked the General Assembly to elevate the county court judge to a circuit or superior court judge. He stated that the county court judges in Floyd County and Madison County, the last two counties that have county courts, will become superior court judges on that date.

Mr. Tyler said that since the salary and benefits were the same for a circuit or superior court judge as for a county court judge while the jurisdiction that could be exercised by a circuit or superior court judge was much greater than that of a county court judge, it is doubtful any county would ever again request the creation of a county court. He said that because of this, the Commission may want to consider repealing IC 33-30 concerning the establishment and operation of county courts.

Sen. Bray said the Commission would consider recommending PD 3019 at a future meeting.

Sen Bray then stated that the next Commission meeting would occur on August 28 at 1:30 PM.

Sen. Bray adjourned the meeting at 3:34 PM.